



MAINE REVENUE SERVICES

(FORMERLY BUREAU OF TAXATION)

SALES/EXCISE TAX DIVISION

INSTRUCTIONAL BULLETIN NO. 41

MEDICINES, MEDICAL EQUIPMENT AND PROSTHETIC DEVICES

This bulletin is intended solely as advice to assist persons in determining, exercising or complying with their legal rights, duties or privileges. It contains general and specific information of interest as well as interpretations and determinations by Maine Revenue Services regarding the taxability of sales of medical supplies and equipment. Portions of the Sales and Use Tax Law referred to in this bulletin can be found at the end of the bulletin in Attachment #1. Also attached are the applicable Sales and Use Tax Rules.

I. Prescription Medicines:

The Sales and Use Tax Law provides an exemption for medicines for human beings sold on a doctor's prescription. "Medicines" means antibiotics, analgesics, antipyretics, stimulants, sedatives, antitoxins, anesthetics, antipruritics, hormones, antihistamines, oxygen, vaccines and other medications and drugs used in the prevention, diagnosis or treatment of disease or injury. "Sold on doctor's prescription" means that the medicine is dispensed or administered by a medical professional authorized by law to prescribe medicines for human beings or sold by a licensed pharmacist in accordance with a prescription issued by a medical professional authorized to prescribe medicines for human beings.

Bandages, dressings, sutures, swabs, hypodermics, instruments and similar items that may be used in the diagnosis and treatment of injury or disease, but which are not medicines, are subject to tax whether sold to an individual or to a medical professional for use in his or her practice. Sales to individuals of "over-the-counter" drugs without a written prescription are also taxable, even if the drug is purchased on the advice or recommendation of a physician. However, there is no tax on nonprescription medicines purchased by a doctor for use in the doctor's medical practice.

Sales of medicines originally prescribed by a doctor on a refillable prescription are exempt when the prescription is refilled.

II. Prosthetic Aids:

"Prosthetic aids" means devices surgically implanted in or worn by the patient as a substitute for a functioning part of the human body. Artificial limbs and artificial eyes; mammary prostheses and brassieres specifically designed to accommodate mammary prostheses; ostomy appliances; enteral feeding devices; dentures, crowns, caps and materials actually used in the repair or replacement of teeth such as dental amalgam and cement; and cardiac pacemakers are examples of items that qualify for exemption as prosthetic aids. Repair parts for items that meet the definition of "prosthetic aids" are also exempt.

Items ordinarily worn for cosmetic purposes, such as wigs, false eyelashes and makeup, are taxable whether or not the need for them results from a medical condition.

Orthopedic or therapeutic devices and appliances which do not replace a functioning part of the human body are not prosthetic aids. Articles of this type are taxable unless they constitute "artificial devices designed for the use of a particular individual to correct or alleviate physical incapacity" (please see section V. below for more information regarding artificial devices).

III. Hearing Aids:

Sales of hearing aids and sales of batteries and repair parts for hearing aids are exempt from tax.

IV. Eyeglasses:

Sales of prescription eyeglasses and contact lenses are exempt from tax. Repair or replacement parts and lenses for prescription eyeglasses are also exempt.

Nonprescription sunglasses, opera glasses, magnifying glasses, platform magnifiers and similar items are taxable. Cleaning solutions and supplies for contact lenses and eyeglasses are taxable.

V. Artificial Devices:

The Maine Sales and Use Tax Law provides an exemption for "artificial devices designed for the use of a particular individual to correct or alleviate physical incapacity." In order to be exempt under this provision, a device must be actually designed, constructed or altered for the use of a particular individual. Sales of standardized or stock devices such as trusses, supports, neck or back braces, orthopedic shoes, athletic supporters, support hosiery, arch supporters, elastic bandages and similar items are taxable unless they are designed, constructed or altered for the use of a particular individual to correct or alleviate physical incapacity.

VI. Crutches and Wheelchairs:

Crutches, canes, walkers and wheelchairs sold for the use of sick, injured or disabled persons are exempt. Sales of crutches, canes, walkers and wheelchairs for rental use are taxable.

There is no exemption in the Sales and Use Tax Law for items other than crutches, canes, walkers and wheelchairs purchased to alleviate or compensate for impaired mobility. Some examples of items that are subject to tax are wheelchair lifts, modifications to motor vehicles to make them operable by handicapped persons and motor vehicles that have been so modified, and materials used in the construction of wheelchair ramps or other alterations to real property to make it accessible to handicapped persons.

VII. Diabetic Supplies:

Sales of insulin, antidiabetic drugs, testing supplies such as Clinitestu, Clinistixu and Tes-Tapeu, and other items used only in the treatment of diabetes are exempt from tax. Sales of hypodermic syringes and needles to diabetic patients are exempt.

Sales of items that are not used only in the diagnosis or treatment of diabetes, and which are not prescription medicines, should be regarded as taxable unless the purchaser has provided evidence such as a statement from a doctor that the patient has been diagnosed as diabetic, and unless the purchaser states that the items being purchased are to be used in the treatment of his or her diabetes.

VIII. Seeing Eye Dogs:

The Sales and Use Tax Law provides an exemption for "sales of goods and services which are essential for the care and maintenance of seeing eye dogs which are used to aid any blind person."

Sales of dog food, veterinary medicines and supplies, and other items ordinarily used in the care and maintenance of domestic dogs will be presumed to qualify for exemption when sold for use by a blind person who has a seeing eye dog. The retailer must maintain records of exempt sales of goods for a seeing eye dog and must have as a part of that record the name of the blind person who owns the seeing eye dog.

IX. Sales to Exempt Organizations:

The Sales and Use Tax Law provides exemptions for sales to the federal government, the state of Maine and political subdivisions of the state of Maine. Exemptions are also provided for numerous categories of organizations. Among the types of organizations that qualify for exemption are incorporated hospitals; incorporated nonprofit nursing homes licensed by the Department of Human Services; incorporated nonprofit boarding care facilities licensed by the Department of Human Services; incorporated nonprofit home health care agencies certified under the United States Social Security Act of 1965, Title XVIII, as amended; incorporated nonprofit rural community health centers engaged in, or providing facilities for, the delivery of comprehensive primary health care; incorporated nonprofit dental health centers; institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research; mental health facilities and mental retardation facilities which

are contractors under or receiving support under the Federal Community Mental Health Centers Act or its successors, or receiving support from the Department of Mental Health and Mental Retardation pursuant to Title 34-B, 3604, 5433 or 6204; incorporated nonprofit organizations providing temporary residential accommodations to pediatric patients suffering from critical illness or disease, such as cancer, or who are accident victims, and adult patients with cancer, or the families of the patients; incorporated nonprofit hospice organizations which provide a program or care for the physical and emotional needs of terminally ill patients; and local branches of incorporated international nonprofit charitable organizations which provide, on a loan basis and free of charge, medical supplies and equipment to persons.

Organizations of any of the above types which are not agencies of the federal government, the state of Maine, or local governments within the state of Maine must apply for and be issued a Certificate of Exemption by Maine Revenue Services as provided in Rule 302. A copy of the Certificate must be provided to suppliers from which the organization makes exempt purchases.

The following types of sales are NOT exempt from tax:

1. Sales to any of the above organizations for use in activities that are primarily commercial enterprises.
2. Sales to lessors of tangible personal property which will be leased to a government agency or exempt organization.
3. Retail sales of tangible personal property or taxable services made by an exempt organization, except charges made to patients for rooms and meals by a hospital or nursing home.
4. Sales to individuals of otherwise taxable goods or services that will ultimately be paid for wholly or in part by a government agency under a grant or entitlement program such as Medicare, Medicaid, CHAMPUS, municipal general assistance, or any income maintenance or rehabilitation program administered by the Department of Human Services.
5. Sales to separate corporations or organizations that are related to a hospital, nursing home or other exempt entity but which do not themselves meet the qualifications to be issued a Certificate of Exemption.

X. Additional Information:

The above outlines some common situations involving application of the Sales and Use Tax Law to sales of medicines, medical equipment and prosthetic devices. It is not intended to be all-inclusive. Requests for information on specific situations should be in writing, should contain full information as to the transaction in question, and should be directed to the:

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**ATTACHMENT #1
Excerpts taken from 36 M.R.S.A.**

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36 1760. Exemptions.

No tax on sales, storage or use shall be collected upon or in connection with:

5. Medicines. Sales of medicines for human beings sold on doctor's prescription.

5-A. Prosthetic devices. Sale of prosthetic aids, hearing aids or eyeglasses and artificial devices designed for the use of a particular individual to correct or alleviate physical incapacity; and sale of crutches and wheelchairs for the use of invalids and crippled persons and not for rental.

6. Certain meals. Sales of meals:

A. Served by public or private schools, school districts, student organizations and parent-teacher associations to the students or teachers of a school;

B. To patients of hospitals licensed by the State for the care of human beings and other institutions licensed by the State for the hospitalization or nursing care of human beings, or institutions, agencies, hospitals, boarding homes and boarding houses licensed by the Department of Human Services under Title 22, subtitle 6, and Title 22, 1781;

C. By hospitals, schools, long-term care facilities, food contractors and restaurants to incorporated nonprofit area agencies on aging for the purpose of providing meals to the elderly; and

D. To residents of incorporated nonprofit church-affiliated congregate housing facilities for the elderly in which at least 75% of the units are available for leasing to eligible lower-income residents.

16. Hospitals, research centers, churches and schools. Sales to incorporated hospitals, incorporated nonprofit nursing homes licensed by the Department of Human Services, incorporated nonprofit boarding care facilities licensed by the Department of Human Services, incorporated nonprofit home health care agencies certified under the United States Social Security Act of 1965, Title XVIII, as amended, incorporated nonprofit rural community health centers engaged in, or providing facilities for, the delivery of comprehensive primary health care, incorporated nonprofit dental health centers, institutions incorporated as nonprofit corporations for the sole purpose of conducting medical research or for the purpose of establishing and maintaining laboratories for scientific study and investigation in the field of biology or ecology or operating educational television or radio stations, schools and regularly organized churches or houses of religious worship, excepting sales, storage or use in activities which are mainly commercial enterprises. "Schools" means incorporated nonstock educational institutions, including institutions empowered to confer educational, literary or academic degrees, which have a regular faculty, curriculum and organized body of pupils or students in attendance throughout the usual school year, which keep and furnish to students and others records required and accepted for entrance to schools of secondary, collegiate or graduate rank, no part of the net earnings of which inures to the benefit of any individual.

18. Certain institutions. Rental charged for living or sleeping quarters in an institution licensed by the State for the hospitalization or nursing care of human beings.

28. Community mental health facilities and community mental retardation facilities.

Sales to mental health facilities or mental retardation facilities which are:

A. Contractors under or receiving support under the Federal Community Mental Health Centers Act, or its successors; or

B. Receiving support from the Department of Mental Health, Mental Retardation and Substance Abuse Services pursuant to Title 34-B, section 3604, 5433 or 6204.

33. Diabetic supplies. All equipment and supplies, whether medical or otherwise, used in the diagnosis or treatment of diabetes;

35. Seeing eye dogs. Sales of tangible personal property and taxable services essential for the care and maintenance of seeing eye dogs used to aid any blind person.

46. Residential facilities for medical patients and their families. Incorporated nonprofit organizations providing temporary residential accommodations to pediatric patients suffering from critical illness or disease, such as cancer, or who are accident victims, and adult patients with cancer, or the families of the patients;

55. Incorporated nonprofit hospice organizations. Sales to incorporated nonprofit hospice organizations which provide a program or care for the physical and emotional needs of terminally ill patients.

62. Charitable suppliers of medical equipment. Sales to local branches of incorporated international nonprofit charitable organizations which provide, on a loan basis and free of charge, medical supplies and equipment to persons.